Dr Chan Choo Lip & Anor v Joseph Loi Lik King & Ors

HIGH COURT (KUCHING) — SUIT NO KCH-22–15 OF 2010–III
RHODZARIAH BUJANG J
23 OCTOBER 2012

Tort — Malicious prosecution — Abuse of process — Criminal charges preferred against first plaintiff after raid of his clinic — First plaintiff acquitted of charges — Whether there was reasonable and probable cause for preferring charges against first plaintiff — Whether there was case fit to be tried — Whether there was malice in prosecution of charges against first plaintiff

Dr Chan Choo Lip ('the first plaintiff'), a medical doctor and the majority shareholder of Trident Medical Services Sdn Bhd ('the second plaintiff'), operated a private clinic called the Lee Clinic ('the clinic'), which was owned by the second plaintiff. Based on information received enforcement officers from the Pharmacy Division of the Ministry of Health Sarawak had carried out two raids of the clinic. Though the officer who conducted the first raid of the clinic ('the first raiding officer'), found that that the first plaintiff had kept proper records of the psychotropic pills ('the pills') in the clinic, the officer who conducted the second raid ('the second defendant') found otherwise. It was the finding of the second defendant that 21 of the pills were not listed in the record book kept at the clinic and that the record of 11 of such medication did not tally with the quantity found upon their physical checking of the pills. Following the raid and seizure of the pills, a press conference was held by the Deputy Director of Health (Pharmacy) Sarawak ('the first defendant') which was prominently published by the *Borneo Post*. The findings of the second raid showed a contravention of the Poisons (Psychotropic Substances) Regulations 1989 ('the Regulations') and led to criminal charges being preferred against the first plaintiff. At the trial the first plaintiff was acquitted without his defence being called because he tendered and produced in evidence the prescription registers, which showed that the record of drugs kept in the clinic was in order. This was the plaintiffs' suit against the defendants for malicious prosecution and abuse of process. The first plaintiff claimed that the criminal charges were all preferred against him in bad faith; that the first defendant had charged the plaintiffs with 'supplying the pills to the black market or for illicit purposes' whilst investigations against the plaintiffs were still on-going; and that the second defendant had in an abuse of authority and power gone beyond her scope of duty to the extent of framing the charges against the first plaintiff.

Held, dismissing the claim with costs of RM20,000:

(1) If the first plaintiff had showed the prescription registers, which showed

that the record of drugs kept in the clinic was in order, to the second defendant during her inspection at the clinic there would have been a basis to say that the prosecution of the first plaintiff was without reasonable and probable cause. Without sight of the said registers by the DPP it could not be said that the criminal charges against the first plaintiff were not 'fit for trial'. The fact that the first raiding officer had found that the record of the drugs were in order did not relieve the first plaintiff of the requirement under s 22 of the Regulations to maintain and keep a proper record of the drugs in his possession as the clinic. In the circumstances there was no reason to say that the second defendant was actuated and motivated by malice when she and her team raided the clinic (see para 15).

(2) Further, the burden was on the first plaintiff to prove that the second raid at the clinic was prompted by a cause other than a public tip-off. Since there was no evidence adduced to show a history of relationship that could breed feelings of malice between the first plaintiff and the second defendant, it could not be concluded that there was malice on the part of the second defendant in the prosecution of the first plaintiff (see para 16).

(3) The DPP who sanctioned the prosecution of the charges against the first plaintiff was never called as a witness to be examined as to what facts stated in the second defendant's investigation diary had prompted him to proceed to charge the first plaintiff. In any case, the second defendant's role in the raid, the investigation and the framing of the charges could not obliterate that of the DPP who sanctioned those charges. In the circumstances, the prosecution of the charges against the first plaintiff as sanctioned by the DPP was done with the 'intention to carry the law into effect' (see para 17).

(4) The first plaintiff's case against the first defendant was even more flimsy because the latter neither knew about the raid nor was involved in the investigation which led to the charges being framed against the first plaintiff. Further, the press conference held by the first defendant was unlike any other press conference called by enforcement agencies following a raid, a seizure and an arrest in that it did not reveal the identity of the culprit or serve to vilify him in the eyes of the public. Instead the purpose of the press conference was 'to educate private clinics on the importance of dealing with psychotropic substances according to the Poisons Act 1952'. On the evidence it was clear that the first defendant, who was not acquainted with the first plaintiff at the material time, only called for the press conference in his capacity as the Deputy Director of Health (Pharmacy) Sarawak and not with an ulterior motive or a personal vendetta against the first plaintiff. As such, the defendants sued in this case were not liable for malicious prosecution or abuse of process (see paras 20–21).

(5) On the issue of damages, although the first plaintiff claimed that he had lost many corporate clients because of the raid, there was no evidence to show that these clients were had and lost. If at all the defendants sued in this case were liable for malicious prosecution, which they were not, the damages should be confined to the legal fees and the damage to the first plaintiff's reputation that should be assessed at RM200,000. The claim in respect of the value of the pills seized but not returned should also be disallowed (see para 22).

[Bahasa Malaysia summary

Dr Chan Choo Lip ('plaintif pertama'), doktor perubatan dan pemegang saham majoriti Trident Medical Services Sdn Bhd ('plaintif kedua'), menjalankan klinik swasta yang dikenali sebagai Klinik Lee ('klinik tersebut'), yang dimiliki oleh plaintif kedua. Berdasarkan maklumat yang diterima pegawai-pegawai penguatkuasa daripada Bahagian Farmasi, Kementerian Kesihatan Sarawak telah menjalankan dua serbuan ke atas klinik tersebut. Walaupun pegawai yang menjalankan serbuan pertama ke atas klinik tersebut ('pegawai serbuan pertama'), telah mendapati bahawa plaintif pertama telah menyimpan rekod teratur untuk pil-pil psikotropi ('pil-pil tersebut') di klinik tersebut, pegawai yang menjalankan serbuan kedua ('defendan kedua') mendapati sebaliknya. Adalah penemuan defendan kedua bahawa 21 pil-pil tersebut tidak disenaraikan dalam buku rekod yang disimpan di klinik tersebut dan bahawa rekod 11 perubatan sedemikian tidak sama dengan kuantiti yang ditemui semasa memeriksa pil-pil tersebut secara fizikal. Berikutan serbuan dan rampasan pil-pil tersebut, satu sidang akhbar telah diadakan oleh Timbalan Pengarah Kesihatan (Farmasi) Sarawak ('defendan pertama') yang telah diterbitkan dengan jelas oleh *Borneo Post*. Penemuan serbuan kedua menunjukkan pelanggaran Peraturan-Peraturan Racun (Bahan Psikotropi) 1989 ('Peraturan-Peraturan tersebut') dan membawa kepada pertuduhan jenayah dibuat terhadap plaintif pertama. Dalam perbicaraan plaintif pertama telah dibebaskan tanpa pembelaannya dipanggil kerana dia telah memasukkan dan mengemukakan dalam keterangan daftar-daftar preskripsi, yang menunjukkan bahawa rekod dadah yang disimpan di klinik tersebut adalah teratur. Ini adalah guaman plaintif-plaintif terhadap defendan-defendan kerana pendakwaan yang berniat jahat dan penyalahgunaan proses. Plaintif pertama mendakwa bahawa pertuduhan-pertuduhan jenayah kesemuanya dibuat terhadapnya dengan niat jahat; bahawa defendan pertama telah menuduh plaintif-plaintif 'membekalkan pil-pil tersebut kepada pasaran gelap atau untuk tujuan yang menyalahi undang-undang' manakala siasatan-siasatan terhadap plaintif-plaintif masih berjalan; dan bahawa defendan kedua yang menyalahguna autoriti dan kuasa telah melampaui bidang tugasnya sehinggakan telah membuat pertuduhan-pertuduhan tersebut terhadap plaintif pertama.

Dipuuskan, menolak tuntutan dengan kos RM20,000:

(1) Jika plaintif pertama telah menunjukkan daftar-daftar preskripsi kepada

defendan kedua semasa pemeriksaan di klinik tersebut yang menunjukkan bahawa rekod dadah yang disimpan di klinik tersebut adalah teratur, maka terdapat asas untuk mengatakan bahawa pendakwaan plaintif pertama adalah tanpa sebab yang munasabah dan berkemungkinan. Tanpa kewujudan daftar-daftar tersebut oleh TPR tidak boleh dikatakan bahawa pertuduhan-pertuduhan jenayah terhadap plaintif pertama tidak 'sesuai untuk dibicarakan'. Fakta bahawa pegawai serbuan pertama telah mendapati bahawa rekod dadah itu adalah teratur tidak melepaskan plaintif pertama daripada keperluan di bawah s 22 Peraturan-Peraturan tersebut untuk mengekalkan dan menyimpan rekod yang teratur dadah dalam milikannya sepertimana di klinik tersebut. Dalam keadaan berikut tiada sebab untuk mengatakan bahawa defendan kedua telah digerakkan dan didorong oleh niat jahat apabila dia dan pasukannya menyerbu klinik tersebut (lihat perenggan 15).

(2) Selanjutnya, beban terletak ke atas plaintif pertama untuk membuktikan bahawa serbuan kedua di klinik tersebut telah didorong oleh sebab selain daripada pemberi maklumat awam. Oleh kerana tiada keterangan dikemukakan untuk menunjukkan sejarah perhubungan yang boleh menimbulkan perasaan niat jahat antara plaintif pertama dan defendan kedua, maka tidak boleh diputuskan bahawa terdapat niat jahat di pihak defendan kedua dalam pendakwaan plaintif pertama (lihat perenggan 16).

(3) TPR yang mensanksikan pendakwaan pertuduhan-pertuduhan terhadap plaintif pertama tidak pernah dipanggil sebagai saksi untuk diperiksa berhubung apakah fakta yang dinyatakan dalam diari sisatan defendan kedua itu yang telah mendorongnya meneruskan pertuduhan terhadap plaintif pertama. Dalam apa keadaanpun, peranan defendan kedua dalam serbuan, siasatan dan membuat pertuduhan-pertuduhan tersebut tidak boleh menidakkan bahawa TPR lah yang telah mensanksikan pertuduhan-pertuduhan tersebut. Dalam keadaan berikut, pendakwaan pertuduhan-pertuduhan terhadap plaintif pertama sebagaimana disanksikan oleh TPR telah dilakukan dengan 'niat untuk melaksanakan undang-undang dengan berkesan' (lihat perenggan 17).

(4) Kes plaintif pertama terhadap defendan pertama lebih rapuh kerana defendan pertama tidak mengetahui tentang serbuan itu mahupun terlibat dalam siasatan yang membawa kepada pertuduhan-pertuduhan tersebut dibuat terhadap plaintif pertama. Bahkan, sidang akhbar yang diadakan oleh defendan pertama tidak seperti sidang akhbar lain yang dipanggil oleh agensi-agensi penguatkuasa berikutan suatu serbuan, rampasan dan tangkapan di mana ia tidak mendedahkan identiti pelaku atau bertindak untuk memburuk-burukkannya di mata masyarakat. Sebaliknya tujuan siding akhbar itu adalah 'untuk mendidik klinik swasta tentang kepentingan berurusan dengan bahan pikotropi menurut

Akta Racun 1952'. Berdasarkan keterangan adalah jelas bahawa defendan pertama, yang tidak berkenalan dengan plaintif pertama pada masa matan, hanya dipanggil untuk sidang akhbar dalam kapasitinya sebagai Timbalan Pengarah Kesihatan (Farmasi) Sarawak dan bukan dengan motif lain atau dendam peribadi terhadap plaintif pertama. Oleh itu, defendan-defendan yang disaman dalam kes ini tidak bertanggungjawab kerana pendakwaan berniat jahat atau penyalahgunaan proses (lihat perenggan 20–21).

(5) Berhubung isu ganti rugi, walaupun plaintif pertama mendakwa bahawa dia telah hilang ramai pelanggan korporat kerana serbuan tersebut, tiada keterangan menunjukkan bahawa pelanggan-pelanggan tersebut memang wujud dan lenyap. Jikapun semua defendan-defendan yang disaman dalam kes ini bertanggungjawab kerana pendakwaan berniat jahat, yang mana mereka tidak begitu, ganti rugi tersebut hendaklah terbatas kepada fee guaman dan ganti rugi terhadap reputasi plaintif pertama patut ditaksirkan sebanyak RM200,000. Tuntutan berkaitan nilai pil-pil yang telah dirampas tetapi tidak dikembalikan juga tidak patut dibenarkan (lihat perenggan 22).]

Notes

For cases on malicious prosecution, see 12 *Mallal's Digest* (4th Ed, 2011 Reissue) paras 833–852.

Cases referred to

Glinski v McIver [1962] AC 726, HL (refd)
Herniman v Smith [1938] AC 305, HL (refd)
Hicks v Faulkner (1878) 8 QBD 167, HL (refd)
PP v Yong Kong Hin [1981] CLJ (Rep) 259, HC (refd)
Rawther v Abdul Kareem [1966] 2 MLJ 201, FC (refd)
William v Taylor (1829) 6 Bing 182, CA (refd)

Legislation referred to

Control of Drugs and Cosmetic Regulations 1984
Poisons Act 1952
Poisons (Psychotropic Substances) Regulations 1989 s 22, 22(a), (b)
Sale of Drugs Act 1952 s 12(1)

Sunny Si (Si & Associates) for the plaintiff.
Mohd Taufik bin Mohd @ Mohd Yusoff (Senior Federal Counsel (Civil), Attorney General's Chambers, Sarawak) for the defendant.

Rhodzariah Bujang J:

[1] The sleepy small town of Serian, about an hour's drive from Kuching was

A abuzzed five years ago with a raid at one of a few private clinics serving its populace, Lee Clinic, which does not however take the name of its owner — it is operated by one Dr Chan Choo Lip ('Dr Chan') and owned by a company, Trident Medical Services Sdn Bhd of which Dr Chan is the majority shareholder. There were in fact two raids by the enforcement officers from the B Pharmacy Division of the Ministry of Health Sarawak — the first one was on 10 May 2007 which ended well for Dr Chan for it was found that the record of drugs kept in the clinic was in order.

C **[2]** The second one, on 28 May 2007 spelt disaster for him for the raiding team led by one Riabiawati bt Omar ('Rabiawati') found a cache of psychotropic medicines at both the ground floor and the first floor of the clinic although Dr Chan was not a psychiatrist. He is a medical doctor who graduated with an MBBS from the National University of Singapore.

D

[3] Following the raid and seizure of the pills, a press conference was held by the Deputy Director of Health (Pharmacy) Sarawak, one Joseph Loi Lik King ('Joseph Loi') which was prominently published by the *Borneo Post*. It was highlighted in the newspaper publication that a doctor (unnamed) was E suspected and investigated of being involved in the illegal supply of psychotropic pills and that the fifty two types of pills discovered at the clinic was estimated to have a black market value of about RM1.3m. The raid according to the report was from a tip off from the public and a month of intelligence gathering.

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[4] On 29 February 2008, Dr Chan filed a suit for libel (S-22–35 of 2008) against, inter alia, the *Borneo Post* and Joseph Loi which suit was subsequently dismissed on 19 August 2011. Then on 2 September 2008, Dr Chan was G summoned, arising from the raid, to appear in the sessions court in Criminal Summons No SC-63–65 of 2008–IV to answer a charge under the Control of Drugs and Cosmetic Regulations 1984 which is punishable under s 12(1) of the Sale of Drugs Act 1952. This was followed by 32 other charges in Criminal Summons No SC-63–94 of 2008–IV to SC-63–104 of 2008–IV. The first H criminal summons was withdrawn by the prosecution on 28 January 2009 and Dr Chan was given a discharge and acquittal of the same. The attorney general filed an appeal against the order of acquittal and discharge but later withdrew the appeal. The 32 charges also ended with a victory for Dr Chan when the same order was made after the trial, without his defence being called, on 27 I August 2009. Almost five months later, Dr Chan filed another suit against Joseph Loi, Rabiawati, the Ministry of Health (Pharmacy Division) Sarawak and the Government of Malaysia for malicious prosecution and abuse of process. Dr Chan is joined in this action by Trident Medical Services Sdn Bhd, the owner of Lee Clinic.

[5] I presided over the trial of this action and this is the judgment for it.

MALICIOUS PROSECUTION

[6] Mr Sunny Si for Dr Chan and Mr Mohd Taufik for the government officers and the government are united in their common citation of the Federal Court case of *Rawther v Abdul Kareem* [1966] 2 MLJ 201 as laying down the elements for the successful prosecution of the tort of malicious prosecution. There are five of such elements, said Thomson LP, which I have taken the liberty to summarise below:

(i) The defendant must set the criminal law in motion against the plaintiff.

(ii) The criminal proceedings terminated in his favour.

(iii) There was no reasonable and probable cause for preferring the charges against the plaintiff.

(iv) The defendant was motivated by malice in doing so.

(v) The prosecution had caused damage to the plaintiff.

[7] In relation to the third element, what is reasonable and probable depends on the facts of each case (per Tindel CJ in *William v Taylor* (1829) 6 Bing 182). The decisions of the past acknowledged how difficult it is to decide on this element and to determine the prosecutor's reason for instituting the criminal proceedings against the plaintiff. Hawkins J in *Hicks v Faulkner* (1878) 8 QBD 167 at p 171 defined it as 'an honest belief in the guilt of the accused …', Lord Atkin in *Herniman v Smith* [1938] AC 305 at p 316 said the question is 'whether there is a case fit to be tried', whilst Lord Denning in *Glinski v McIver* [1962] AC 726 at p 758 held that the prosecutor 'has only to be satisfied that there is a proper case to lay before the court …'.

[8] All these definitions I will bear in mind when I analysed the evidence presented at the trial.

EVIDENCE OF MALICE

[9] Mr Sunny Si in his written submission listed eight grounds why he believes that there was malice in the prosecution of the charges against his client. I reproduced the grounds below but have taken the liberty of changing his reference to the parties by substituting their names, rather than the plaintiff/defendant used by him. The grounds are:

(1) The 32 charges were really trumped up after the libel suit was filed by Dr. Chan Choo Lip.

(2) The cavalier manner the charges were preferred or preferred deliberately, all in bad faith and abuse of powers on the defendants' part.

(3) The numerous roles performed by Rabiawati and getting mangled in the preparation of the charges.

(4) The concealment of material facts by Rabiawati:-

(a) *lying* and *hiding the real purpose* of going to the clinic on 28.05.2007;

(b) *concealing* from the court the evidence of Tan Yien Nee's report;

(c) *reckless disregard* of the prescription registers which were available and the Ministry of Health record shows that these were available;

(d) trying to *cover up* the involvement of Joseph Loi.

(5) The Press Conference was called by Joseph Loi on 29.05.2007 whilst investigation was still on-going is as good as charged the plaintiffs of 'supplying the pills to the black market' / 'for illicit purposes'.

(6) Joseph Loi lying and denying knowledge and involvement in drafting the Press Statement and calling the Press Conference.

(7) Rabiawati, in an abuse of authority and power, went beyond her scope of duty to the extent of framing the charges with the Deputy Public Prosecutor.

(8) Ministry of Health, Pharmacy Division, Sarawak and Government of Malaysia led by Rabiawati and helmet by Joseph Loi is making an example of the raid by the State Health Department at the expense of the plaintiffs.

[10] These points raised by him are dealt with collectively as follows.

THE STARTING POINT

[11] It has to be the second raid, not the first as contended by Dr Chan. Though the officer who conducted the first raid, one Tan Yien Nee found that Dr Chan had kept proper records of the psychotropic pills in the clinic, Rabiawati did not. As she testified in the sessions court, 21 of such medication were not listed in the record book kept at the clinic which she inspected and the record of 11 of them do not tally with the quantity found upon their physical checking of the pills.

[12] All these showed a contravention of the Poisons (Psychotropic Substances) Regulations 1989 by Dr Chan in particular s 22(a)–(b) which provide that he:

(a) shall use a separate register or a separate part of the register with respect to each type of psychotropic substance;

(b) shall enter in the register every quantity of psychotropic substance received

by him whether for the purpose of sale, supply, manufacture, administration or any other purpose, the total stock of such psychotropic substance in his possession, the name and address of the supplier of such psychotropic substance, and the date on which such psychotropic substance was received by him.

[13] The 32 charges in the sessions court were based on the physical inspection of the findings of Rabiawati and the result of her investigation is then forwarded to the Attorney General's Chambers of Kuching for further action. It was the learned deputy public prosecutor who decided that there was basis for the prosecution of Dr Chan and signed the sanctions to prosecute him for each one of them. Dr Chan was acquitted without his defence being called because at the trial the defence tendered and produced the prescription registers (exhs D4–D22) and exh D1 which was the checklist on the maintenance of the records Tan Yien Wee prepared from the first raid.

[14] However, as Mr Mohd Taufik correctly pointed out, Dr Chan never produced exs D4–D22 to Rabiawati during her inspection at the clinic. According to Dr Chan he did try to give the certified copies to the enforcement section of the Pharmacy Division but was given the standard answer 'perkara in masih dalam penyiasatan', loosely translated to mean that 'the matter is still under investigation'. I do not think that such an answer, if at all it was given, should have prevented Dr Chan from presenting them to the officers. He could have sent them by post and/or courier service if he did not want to hand them over personally to Rabiawati or the said enforcement section or the attorney general's chamber.

[15] If he had done that rather than a resigned sigh 'What am I to do' as he expressed in his evidence at the trial, but the investigation papers were still forwarded to the attorney general's chambers and the criminal summons still registered with the court, I would have the basis to say that the prosecution of Dr Chan was without reasonable and probable cause. Without sight of the said registers by the learned deputy public prosecutor, how could I say that the charges against Dr Chan were not 'fit for trial'?. Worst still, what reason do I have say that Rabiawati was actuated and motivated by malice when she and her team raided the clinic and forwarded the investigation papers to the attorney general's chambers? The fact that Tan Yien Nee has found that the records of the drugs were in order that first time and as testified at the trial that the Ministry of Health has their own records of the purchase of psychotropic drugs by him, does not relieve Dr Chan of the requirement under s 22 of the Poisons (Psychotropic Substances) Regulations 1989 to maintain and keep a proper record of the said drugs in his possession at the clinic.

[16] Further, the burden is on Dr Chan's shoulders to prove to the contrary

that the raid at his clinic by Rabiawati was prompted by a cause other than the public tip-off and surveillance at the clinic of the sale of illicit psychotropic substances there at. That it was in fact the feeling of ill-will towards him which led the said officer to his doorsteps. Since there was not a shred of evidence adduced to show a history of relationship which could breed such feelings of malice towards each other, I cannot conclude my consideration, in his favour, of the evidence presented in support of this issue from the sole testimony of Dr Chan at the trial. Rabiawati, no doubt admitted in her evidence in the trial before me that she was also the investigating officer of the case who went to see the deputy public prosecutor with the investigation papers, that she recorded statement from Dr Chan and his assistant at the clinic and kept all the exhibits pertaining to the case until her transfer from Kuching. Wearing too many hats of course is against the rule of prudence and expedience (see *Public Prosecutor v Yong Kong Hin* [1981] CLJ (Rep) 259) and which the more seasoned enforcement agencies such as the police would not have done. Offending those rules however does not translate to evidence of malice on her part in the prosecution of Dr Chan. She must be shown (and the same goes for Joseph Loi) to have done more to influence the learned deputy public prosecutor to sanction the prosecution of all the charges in order to sustain the allegation of malicious intention levelled against her.

[17] Further more, the learned deputy public prosecutor who sanctioned the prosecution of the charges were never called as a witness to be examined as to what facts stated in the investigation diary that drove him to give the green light for the charges to be registered. Rabiawati's role in the raid, the investigation and the framing of the charges cannot obliterate that of the learned deputy public prosecutor who sanctioned the charges. To agree to Mr Sunny Si's submission that her wearing of the many hats and helping the learned deputy public prosecutor to frame the charges shows abuse of power would belittle the professionalism and intellectual capacity of the learned deputy public prosecutor who gave the sanction to prosecute the criminal charges.

[18] Though it is not denied that the prescription registers were available at the clinic at that time as testified in the criminal trial by Gan Huei Hsin, the other pharmacy officer who was present at the raid and that Rabiawati in her evidence before me admitted that she did not do a thorough inspection of the books and records in the clinic but again these facts do not persuade me as proof of malice even when I consider them together with the other evidence discussed above.

[19] I am therefore constrained to conclude that the prosecution of the charges against Dr Chan as sanctioned by the learned deputy public prosecutor was, in the circumstances of this case done with the 'intention to carry the law into effect', (per Thomson LP in *Rawther*'s case at p 204 thereof). My

consideration above which negates the evidence of malice are also relevant to show that the process of the law was not abused in the prosecution of the charge against Dr Chan.

[20] Dr Chan's case against Joseph Loi is even more flimsy because he did not know about the raid nor was he involved in the investigation which led to the charges being framed as testified by Rabiawati in her witness statement. However at the trial, much was made about the press conference with Joseph Loi held following the raid, that it should not have been held when the investigation into the case was still in progress.

[21] What I need to say about that press conference is this. It is not unlike any other press conferences called by enforcement agencies following a raid, a seizure and an arrest which yielded positive results and scores a point for that agency in the eyes of the public. In this particular case, it highlights the discovery without passing a judgment and did not reveal the identity of the culprit. It did not serve to vilify Dr Chan in the eyes of the public but 'to educate private clinics on the importance of dealing with psychotropic substances according to the Poisons Act 1952' said Dzagarullah bin Daud ('DW3'), a pharmacy officer from the Ministry of Health, Putrajaya who was assigned to monitor the quantity and frequency of the purchase of psychotropic substances by clinics and pharmacies. In fact, he went with Rabiawati to raid the clinic and was the man who drafted the press release. Dzafarullah also confirmed Rabiawati's evidence that Joseph Loi did not know about the raid because he liaised with one Abu Hassan who was the Head of Enforcement of the Pharmary Division in Kuching at that time. It was in Dzafarullah's evidence that the raid was conducted by their division in the Ministry of Health because of the high purchase of the psychotropic drugs by the clinic. On the evidence, I am satisfied that Joseph Loi, who was not acquainted with Dr Chan at that material time only called for the press conference in his capacity as the deputy director of the pharmacy division and not with an ulterior motive or a personal vendetta against Dr Chan.

DAMAGES

[22] Despite my conclusion above, I would, for the sake of completeness, address the issue of damages. Dr Chan testified that he lost many corporate clients such as CIMB Bank Bhd, MARA and Sarawak Pepper Marketing Board because of the raid. He listed them in his evidence but other than his bare testimony; I have no other evidence to show that these clients nor the staffs of the clinic were had and lost or of his allegation that there were suppliers who lost their trust in him and refused to favour him with goods on credit terms. But Dr Chan did prove the legal fees he paid to his defence counsel in the criminal trial of the 32 charges, Mr Shankar Ram who also testified in the trial

before me that the legal fees paid to him was RM200,000. So if at all the defendants sued in this case are liable for malicious prosecution and abuse of process (which I say they are not), damages should be confined to the legal fees and the damage to his reputation which I would assess at RM200,000, seeing that he is a professional who earns his living from practicing as a medical practioner. Reputation for him, as would I suppose, other professionals with a private practice, is a crucial factor in determining its success.

[23] As for his claim for RM1.3m being the value of psychotropic pills seized but not returned, I do not think the defendants in this case should be faulted. The decision not to order so by the sessions court at the conclusion of the criminal trial, cannot be the basis upon which damages should be given in this case.

[24] In conclusion, the claim herein is dismissed with cost of RM20,000.

Claim dismissed with costs of RM20,000.

Reported by Kohila Nesan